In the High Court of Judicature at Madras

Dated: 19/10/2004

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The Honourable Mr.Justice V.KANAGARAJ
and
The Honourable Mr.Justice T.V.MASILAMANI

C.M.A.No.2837 of 2004
and
C.M.P.No.16303 of 2004

A.Samivel .. Appellant

-Vs-

The Competent Authroity and
Additional Commissioner
(Cinema & Irrigation),
Land Administration Department
Chepauk
Chennai.5. .. Respondent

Civil Miscellaneous Appeal filed under Section 11 of the Tamil Nadu Protection of Interest of Depositors Act, 1997, against the order dated 23.09.2004 and made in O.A.No.44 of 2004 on the file of Learned Special Judge under TNPID Act, Madras.

!For appellant : Mr.AR.L.Sundaresan

^For respondent : Mr.Senthilnathan GA (CS)

:JUDGMENT

(The Judgment of the Court was delivered by V.KANAGARAJ.,J.)

By consent, Civil Miscellaneous Appeal itself is taken up for final disposal.

2. Today, when the C.M.P.No.16303 of 2004 was taken up for consideration in the presence of the learned counsel appearing for the petitioner and the respondent as well, this Court is apprised of the fact to the extent that the appellant has come forward to file the above C.M.P. praying for the grant of interim stay of the order dated 23.09.2004 made in O.A.No.44 of 2004 by the Court of the Special Judge under TNPID Act, Chennai, relating to the conditions imposed requiring the appellant/petitioner to deposit a sum of Rs.10/lakhs.

3. Learned counsel appearing for the appellant would submit that the total number of accused are 31 and all are alleged to have had some nexus or the other in the defunct company of the appellant herein, and since the petitioner is neither a Managing Director nor even a Director and no such responsibilities are attached to the appellant whether it is policy making or decision taking in the affairs of the company. But two vehicles belonging to the appellant both stage carriage permitted buses run in the interest of the general public belonging to the petitioner, have been attached and for the release of these vehicles as an interim measure since application was filed by the appellant, while imposing conditions, the Special Court Constituted under the Tamil Nadu Protection of Interest of Depositors Act, Chennai, has imposed an unreasonable condition of requiring the petitioner to deposit a sum of Rs.10/ lakhs, inspite of having imposed such other usual and reasonable conditions such as to furnish security for a sum of Rs.1/lakh, to give an undertaking not to dispose of the vehicles in question without the permission of the Court etc. which are the usual conditions reasonably imposed and therefore the appellant is ready and willing to follow. But the other condition to deposit a sum of Rs.10/lakhs since being not reasonable, having not been fixed on any legal principle but arbitrarily the appellant has come forward to prefer the above civil Miscellaneous Appeal further praying in the above petition filed in the above C.M.A. for an interim order to be passed immediately releasing the immovable property that is the two stage carriage buses bearing Registration Nos.TN-27-5-3366 and TN-27-D-5445.

4. On the part of the learned counsel appearing on behalf of the respondent, cited the proviso to Section 7 (6) wherein it is held that

"the Special Court shall not release from attachment any interest which it is satisfied that the Financial Establishment or the person referred to in sub-Section (1) ha sin the property unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for re-payment to the depositors of such Financial Establishment."

This Section is to the effect of an order that could be passed in conclusion of trial and at the time of the disposal of the properties in accordance with the decision arrived at and not for the interim release of the property on certain conditions which could be done at the discretion of the Court. Even Section 9 of the Act dealing with security in lieu of attachment where the property could be released on security which is left to the discretion of the Special Court and to its satisfaction and therefore since being the interim release of the moving object, the stage carriage permitted bus, the same cannot be unnecessarily kept idle without being run and being exposed to sun and rain thus reducing the value of the vehicles besides subjecting the general public to unnecessary inconveniences and hardships and therefore, it is desirable to release the vehicles bearing Registration Nos.TN-27-5-3366 and TN-27-D-5445 on such stringent conditions such as those conditions which are usually imposed on the owners of the vehicle and those conditions have also been imposed by the trial Court at the time of ordering the release of the vehicles, for instance, to offer security for Rs.1/lakh, by means of executing

personal bond and to undertake not to sell the vehicles without prior permission from the Court and such other conditions imposed but the other condition imposed requiring the appellant to deposit a sum of Rs.10/lakhs is neither imposed on any legal principle nor in adherence of some parameters adopted by Courts and the same appears to be arbitrary.

5. It is further an admitted fact on the part of the appellant that the vehicle is worth Rs.6,50,000/- and while so, the point for consideration at this juncture is, whether while ordering the interim release of the vehicle which has been attached pending disposal of the appeal, could any such condition be imposed requiring the party to deposit a sum that is more than the value of the article attached? Definitely, the answer is in the negative. It is not only improper but also unreasonable and arbitrary on the part of the Court to fix any amount without application of mind or without assigning proper reasons.

6. However, the appellant himself is ready to deposit a sum of Rs.5,50,000/- and since the estimated value of the vehicle is also Rs.6 ,50,000/- and already a sum of Rs.1/lakh has been deposited before the Court of Judicial Magistrate, Mettur in Crl.O.P.No.20918 of 2003 and therefore, it is only reasonable to require the appellant to deposit a sum of Rs.5,50,000/-(Rupees five lakhs and fifty thousand only) that is to the value of the vehicle attached and hence, the following order.

In result,
(i) the above Civil Miscellaneous Appeal succeeds and the same is partly allowed to the extent indicated in the preceding paragraph No.6

(ii) consequently, C.M.P.No.16303 of 2004 is closed.
No costs.

(V.K.,J. (T.V.M.,J.)
Index : Yes
Internet : Yes

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To
1) The Competent Authroity and
Additional Commissioner
(Cinema & Irrigation),
Land Administration Department
Chepauk
Chennai.5.

2) The Record Keeper, VR Section, High Court, Madras.104.

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